

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

PFIZER INC

Plaintiff,

v.

TEVA PHARMACEUTICALS USA and
TEVA PHARMACEUTICAL
INDUSTRIES LTD.

Defendants.

Civil Action No. 06-89-GMS

**PLAINTIFF PFIZER INC'S REPLY BRIEF IN SUPPORT OF ITS
CONTINGENT MOTION TO ENJOIN THE TEVA DEFENDANTS FROM
PROCEEDING WITH THEIR LATER-FILED SUIT IN THE SOUTHERN
DISTRICT OF NEW YORK**

CONNOLLY BOVE LODGE & HUTZ LLP

/s/ Daniel C. Mulveny
Rudolf E. Hutz (#484)
Daniel C. Mulveny (#3984)
1007 N. Orange Street
P. O. Box 2207
Wilmington, DE 19899-2207
(302) 658-9141
Attorneys for Pfizer Inc

Dated: March 30, 2006

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I. INTRODUCTION

In opposition to Pfizer's contingent motion to enjoin the Teva defendants from proceeding with their later-filed suit in the United States District Court for the Southern District of New York, Teva filed an answering brief with this Court on March 23, 2006. This is Pfizer's reply.

II. ARGUMENT

Teva's opposition misses the point. Pfizer's motion to enjoin is contingent upon this Court denying Teva's motion to transfer to the Southern District of New York. The instant motion is necessary to prevent two separate cases from proceeding regarding the same parties, the same patent, and the same accused products. Teva refused to stay or dismiss the Teva DJ Action now pending in New York if Teva's motion to transfer was denied. Thus, Pfizer was forced to bring this motion to enjoin the Teva DJ Action.

Teva's opposition to Pfizer's motion is meritless. If Teva's motion to transfer is granted, then Pfizer's contingent motion to enjoin is moot. If Teva's motion to transfer is denied, then by opposing this motion, Teva basically seeks to have both the Delaware Action and the Teva DJ Action go forward. Teva presents no reason for having two cases where only one is needed.

The first-filed rule is designed to prevent the situation that Teva apparently desires. Pfizer first-filed its case against Teva in Delaware. Teva second-filed its mirror-image DJ Action in New York days later. If the Court finds that Pfizer appropriately filed this case in Delaware and denies transfer, then pursuant to the first-filed rule, the second-filed Teva DJ Action should be enjoined to prevent two separate cases involving the same parties and facts from proceeding in two separate courts.

Teva's opposition brief provides no credible reasons to allow both cases to proceed. Teva merely reiterates the same arguments it made in support of its motion to transfer this case to New York. These arguments have no bearing as to the instant motion to enjoin. Assuming Teva's motion to transfer is denied, then by necessity the Court will have already determined that Teva's arguments were unpersuasive. Pfizer, therefore, declines Teva's invitation to further burden the Court with these redundant (and irrelevant) arguments.

III. CONCLUSION

For the foregoing reasons, if Teva's motion to transfer is denied, then to avoid the needless waste of judicial resources, Teva should be enjoined from proceeding in the Teva DJ Action.

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/s/ Daniel C. Mulveny
Rudolf E. Hutz (#484)
Daniel C. Mulveny (#3984)
1007 N. Orange Street
P. O. Box 2207
Wilmington, DE 19899-2207
(302) 658-9141
Attorneys for Pfizer Inc

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2006, I electronically filed **PLAINTIFF PFIZER INC'S REPLY BRIEF IN SUPPORT OF ITS CONTINGENT MOTION TO ENJOIN THE TEVA DEFENDANTS FROM PROCEEDING WITH THEIR LATER-FILED SUIT IN THE SOUTHERN DISTRICT OF NEW YORK** with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Mary B. Matterer
Morris James Hitchens & Williams LLP
222 Delaware Avenue, 10th Floor
P.O. Box 2306
Wilmington, DE 19899-2306

I hereby certify that on March 30, 2006, I have mailed by First Class Mail, the document(s) to the following non-registered participants:

Steven J. Lee
Elizabeth J. Holland
Sheila Mortazavi
Cynthia Lambert Hardman
Kenyon & Kenyon LLP
One Broadway
New York, NY 10004

/s/ Daniel C. Mulveny
Rudolf E. Hutz (#484)
Daniel C. Mulveny (#3984)
1007 N. Orange Street
P. O. Box 2207
Wilmington, DE 19899-2207
(302) 658-9141
Attorneys for Pfizer Inc

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